

FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL'S REPORT

MUR: 6932

COMPLAINT FILED: 04/17/2015

SUPPLEMENT FILED: 06/01/2015

NOTIFICATIONS: 04/23/2015; 06/10/2015

06/11/2015

LAST RESPONSE RECEIVED: 08/03/2015

DATE ACTIVATED: 09/21/2015

ELECTION CYCLE: 2016

EXPIRATION OF SOL: 04/01/2018 – 05/22/2020

COMPLAINANT:

Foundation for Accountability and Civic Trust

RESPONDENTS:

Hillary Rodham Clinton

Hillary for America and Jose H. Villarreal in his
official capacity as treasurer

Ready PAC (f/k/a Ready for Hillary PAC) and Amy
Wills Gray in her official capacity as treasurer

Unknown Respondent

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30102(e)(1)

52 U.S.C. § 30116(a)(1)(A), (f)

52 U.S.C. § 30118(a)

52 U.S.C. § 30121(a)(2)

11 C.F.R. § 100.131

11 C.F.R. § 109.20

11 C.F.R. § 109.21

INTERNAL REPORTS CHECKED: Disclosure Reports

AGENCIES CHECKED: None

I. INTRODUCTION

This matter arises out of a complaint alleging that Hillary Rodham Clinton, her principal campaign committee, Hillary for America and Jose H. Villarreal in his official capacity as treasurer ("HFA"), and two unauthorized political committees — Ready PAC and Amy Wills

1 Gray in her official capacity as treasurer (formerly known as Ready for Hillary PAC)
2 violated
3 provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"). The
4 Complaint makes four principal allegations. First, that Clinton failed to timely file her Statement
5 of Candidacy because she became a candidate more than 15 days prior to registering with the
6 Commission. Second, that Clinton accepted excessive and prohibited contributions in the form
7 of payments for several public speaking engagements.¹ Third, that Clinton or her agents
8 impermissibly coordinated with unauthorized committees. Fourth, that HFA received an
9 excessive in-kind contribution by "swapping" email lists with an unidentified independent group
10 which, in turn, had swapped email lists with Ready PAC.

11 As discussed below, the alleged facts do not indicate that Clinton became a candidate
12 more than 15 days prior to her official registration. Moreover, the payments she received for
13 speaking engagements were apparently earned in the ordinary course of her business as a public
14 figure and, therefore, were not contributions. Further, the available information does not support
15 a finding that Clinton impermissibly coordinated with any unauthorized committee. However,
16 the available information indicates that the email list swaps may not have been *bona fide*
17 transactions and, therefore, may have resulted in an excessive in-kind contribution.

18 Therefore, we recommend that the Commission find: (1) no reason to believe that Clinton
19 violated 52 U.S.C. § 30102(e)(1) by failing to timely file her Statement of Candidacy; (2) no
20 reason to believe that Clinton and HFA violated 52 U.S.C. §§ 30116(f), 30118(a), 30121(a)(2)
21 by accepting excessive and prohibited contributions in connection with her paid speeches; (3) no

¹ This also raises the allegation that HFA accepted those excessive and prohibited contributions after Clinton designated HFA as her principal campaign committee. The same is true for the allegations that Clinton or her agents impermissibly coordinated with unauthorized committees.

1 reason to believe that Ready PAC, Clinton, and HFA violated 52 U.S.C. § 30116(a), (f) by
2 making and knowingly accepting excessive contributions in connection with coordinated
3 communications;

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6 (5) reason to believe that Ready PAC, HFA, and an
7 unknown respondent violated 52 U.S.C. § 30116(a), (f) by making and knowingly accepting an
8 excessive contribution in connection with Ready PAC's email list. In addition, we recommend
9 that the Commission authorize an investigation regarding the suspect transactions involving the
10 email list.

11 **II. FACTUAL BACKGROUND**

12 **A. Clinton's Candidacy**

13 On April 12, 2015, Clinton publicly announced her candidacy for president.² The next
14 day, she filed a Statement of Candidacy with the Commission and declared HFA as her principal
15 campaign committee with Jose H. Villarreal as treasurer.³ Clinton asserts that she became a
16 candidate on April 1, 2015, the same day that she entered into a lease for space in Brooklyn,
17 New York to use as her campaign headquarters.⁴

18 The Complaint alleges that the "duration and substance" of Clinton's activities indicate
19 that she decided to become a candidate prior to April 1, 2015, and, therefore, violated the Act by

² Clinton Resp. at 2 (June 10, 2015). HFA adopted the Clinton Response, by letter, on August 3, 2015. Hereinafter, that Response is referred to as "Clinton & HFA Resp."

³ Hillary Clinton Statement of Candidacy (Apr. 13, 2015); *see also* HFA Statement of Org. (Apr. 13, 2015).

⁴ Clinton & HFA Resp. at 2.

1 failing to timely file her Statement of Candidacy.⁵ The Complaint asserts that Clinton met with
2 campaign consultants nearly two years before she announced her candidacy, made or authorized
3 statements that suggested she was a candidate, approved a preliminary campaign budget,
4 searched for campaign headquarters, assembled a campaign staff, encouraged several
5 unauthorized groups that supported her potential candidacy, and hired marketing and branding
6 experts.

7 In response, Clinton argues that her official registration was within the Act's 15-day
8 window for submitting a Statement of Candidacy after becoming a candidate.⁶ She concedes
9 that she "spent some time exploring whether to run for President," but maintains that all such
10 activities complied with the Commission's regulations for "testing the waters" of a potential
11 candidacy.⁷ Her testing the waters activities began on January 12, 2015, according to the first
12 disclosure report that HFA filed with the Commission.⁸

13 **B. Clinton's Speaking Engagements**

14 Prior to announcing her candidacy, and during her testing the waters phase, Clinton was
15 paid substantial amounts for various speaking engagements.⁹ For example, she received an
16 estimated \$300,000 from a women's membership organization, \$300,000 from a college, and

⁵ Compl. at 7 (Apr. 17, 2015); *see also* 52 U.S.C. § 30102(e)(1).

⁶ Clinton & HFA Resp. at 5.

⁷ *Id.* at 2, 5.

⁸ Between January 12, 2015, and March 31, 2015, Clinton spent \$173,066 on items such as "Payroll & Benefits," "Legal Services," "Office Furniture," "Rent," "Strategic Consulting Services," and "Travel." HFA Amended 2015 July Quarterly Rpt. at 14,499-500; 14,505-08; 14,511-16; 14,518-19; 14,566-71 (Sept. 3, 2015). Clinton self-financed her activities and paid vendors directly, which HFA disclosed as in-kind contributions. *Id.* at 14,499; 14,505-07; 14,510-12; 14,518; 14,565.

⁹ Compl. at 3 (citing Rosalind S. Helderman and Philip Rucker, *Romney's Speaking Fee at Public University is \$50,000, Far Less than Clinton's*, WASH. POST, Jan. 20, 2015) (reporting that Clinton "has spoken to dozens of industry associations, Wall Street banks, universities and other groups").

1 \$250,000 from an Ottawa-based think tank.¹⁰ The Complaint alleges that Clinton used her public
2 speaking appearances “to fund her non-declared presidential campaign,” and therefore accepted
3 excessive and prohibited contributions.¹¹ Clinton maintains that this was part of her “regular,
4 ongoing business” while deciding whether to run for president.¹²

5 **C. Alleged Coordination With Unauthorized Committees**

6 Clinton was allegedly supported by unauthorized committees “working on her behalf, and
7 essentially performing tasks that are necessary for a campaign.”¹³ First, in early 2013, Huma
8 Abedin, one of Clinton’s closest aides, was reportedly contacted by someone from Priorities
9 USA regarding “trouble brewing” between Priorities USA and Ready PAC, seeking guidance on
10 how the groups should work together.¹⁴ The call reportedly “touched off a larger debate in
11 Clinton’s circle” and “Clinton herself was forced to grapple with the run-in between the two
12 groups.”¹⁵ There is no indication regarding how Clinton or Abedin responded, but the cited
13 news article states that Ready PAC and Priorities USA subsequently resolved their conflict.¹⁶
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¹⁰ Compl., Ex. F (Amy Chozick, *Precampaign Costs Mounting, Clinton Gets a Silicon Valley Paycheck*, N.Y. TIMES, Feb. 24, 2015); Compl. at 3 (citing Helderman & Rucker, WASH. POST, Jan. 20, 2015); Compl. at 4 (citing L. Ian MacDonald, *Clinton Speech in Ottawa Offers New Life to Old Friendship*, IPOLITICS, Oct. 5, 2014).

¹¹ Compl. at 3, 7-8; *see also* 52 U.S.C. §§ 30116(f), 30118(a), 30121(a)(2).

¹² *See* Clinton & HFA Resp. at 5-6.

¹³ Compl. at 4.

¹⁴ Compl., Ex. A (Maggie Haberman, *Hillary Clinton’s Shadow Campaign*, POLITICO, Jan. 5, 2014). Priorities USA was an independent-expenditure-only political committee that formerly supported Barack Obama’s 2012 candidacy but “was in discussions to reinvent itself as a pro-Hillary Clinton endeavor.” *Id.*

¹⁵ *Id.*

¹⁶ *See id.* (“Eventually they settled on a solution: Ready for Hillary would focus on collecting and analyzing voter data, accepting donations up to \$25,000. Priorities would be the super PAC for mega-donors, working solely on paid advertising.”).

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4 The Complaint alleges that Clinton or her agents impermissibly coordinated with those
5 unauthorized committees.¹⁸ Respondents deny that there was impermissible coordination.¹⁹

6 **D. HFA's Receipt of Ready PAC's Email List**

7 The Complaint alleges that HFA received an excessive in-kind contribution when it
8 obtained Ready PAC's email list in May 2015, after Clinton announced her candidacy.²⁰ HFA
9 reportedly acquired the email list through a "swap" with "another independent group."²¹ Both
10 Ready PAC and HFA acknowledge having exchanged email lists — apparently, Ready PAC
11 exchanged its email list with the independent group which, in turn, exchanged the list with
12 HFA.²² However, both HFA and Ready PAC argue that no contribution resulted because the
13 lists involved in the swap agreements were of equal market value.²³

¹⁸ Compl. at 8; Supp. Compl. at 2 (June 8, 2015).

¹⁹ See Clinton & HFA Resp. at 5-6; Ready PAC Resp. at 4-6 (June 4, 2015);

²⁰ Supp. Compl. at 2.

²¹ See *id.*, Ex. A (Annie Karni, *Hillary Clinton Campaign Scores Ready for Hillary Email List*, POLITICO, May 30, 2015).

²² Clinton & HFA Supp. Resp. at 1 (Aug. 3, 2015); see Ready PAC Supp. Resp. at 2 (July 10, 2015).

²³ Clinton & HFA Supp. Resp. at 1; Ready PAC Supp. Resp. at 3.

III. LEGAL ANALYSIS

A. There is No Reason to Believe That Clinton Failed to Timely File Her Statement of Candidacy

An individual becomes a candidate if she receives contributions or makes expenditures in excess of \$5,000, or consents to another doing so on her behalf.²⁴ The Commission's regulations create a limited exception to the definitions of contribution and expenditure — and therefore to the \$5,000 candidacy threshold — to allow individuals to conduct certain activities to evaluate a potential candidacy (*i.e.*, to “test the waters”).²⁵ The regulations define testing the waters activities as those “conducted to determine whether an individual should become a candidate,” and include, but are not limited to, conducting a poll, telephone calls, and travel.²⁶ Only funds received and payments made “solely for this purpose” are permissible under this exception; they are not contributions and expenditures under the Act, but they are nonetheless still subject to the limitations and prohibitions of the Act.²⁷

The Commission has opined that an individual who has crossed the \$5,000 threshold becomes a candidate “when he or she makes a private determination that he or she will run for federal office.”²⁸ The Commission's regulation enumerates circumstances that indicate when an

²⁴ 52 U.S.C. § 30101(2); *see* 11 C.F.R. § 100.3(a) (same).

²⁵ 11 C.F.R. §§ 100.72(a), 100.131(a).

²⁶ *Id.* §§ 100.72(a), 100.131(a).

²⁷ *Id.* §§ 100.72(a), 100.131(a). When an individual becomes a candidate, funds received or payments made during the course of testing the waters become contributions or expenditures subject to the reporting requirements of the Act and are to be reported as such on the first disclosure report filed by the candidate's authorized committee. *Id.* § 101.3.

²⁸ Advisory Op. 2015-09 at 5 (Senate Majority PAC and House Majority PAC) (“AO 2015-09”); *accord* Advisory Op. 1981-32 at 4 (Askew) (“AO 1981-32”); Advisory Op. 1982-03 at 3 (Cranston) (“AO 1982-03”).

1 individual has decided to become a candidate.²⁹ Where those examples do not apply, the
2 Commission has distinguished between activities “directed to an evaluation of the feasibility of
3 one’s candidacy,” and those “signifying that a private decision to become a candidate has been
4 made” or conducted “as a means of seeking some affirmation or reinforcement of a private
5 decision . . . to be a candidate.”³⁰ Within fifteen days of becoming a candidate, the individual
6 must register with the Commission and designate a principal campaign committee, which itself
7 must file a Statement of Organization within ten days.³¹

8 The Complaint alleges that Clinton “made the decision” to become a candidate prior to
9 April 1, 2015, because she conducted activities that were “only relevant to a campaign.”³²
10 However, it appears that Clinton’s alleged activities were reasonably consistent with testing the
11 waters of a potential candidacy and with Clinton’s ongoing business as a public figure.
12 Moreover, Clinton’s alleged activities, viewed as a whole, do not suggest that she had created a
13 campaign structure. Further, there is no indication that Clinton raised funds in excess of what
14 could reasonably be expected for be used to explore a potential candidacy. Not only does the
15 available information fail to show that Clinton had decided to become a candidate, there are
16 questions about the credibility of the alleged facts.³³ Therefore, as fully explained below, we

²⁹ They include: (1) advertising to publicize an intent to campaign for federal office; (2) fundraising in excess of what could reasonably be expected to be used for testing the waters activity; (3) making statements that refer to the individual as a candidate; (4) conducting activities in close proximity to the election or over a protracted period of time; or (5) taking action to qualify for the ballot. 11 C.F.R. §§ 100.72(b); 100.131(b).

³⁰ AO 1981-32 at 4.

³¹ 52 U.S.C. § 30102(e)(1); 11 C.F.R. §§ 101.1(a), 102.1(a).

³² Compl. at 7.

³³ The allegations are almost entirely based on paraphrased statements vaguely attributed to individuals “familiar” or “in close contact” with Clinton’s activities who describe her activities in general terms without reference to specific examples. Quoted statements and other descriptions in those same news articles generally maintain that Clinton was still deciding whether to run and that her activities, and those of her associates, were in furtherance of helping her make that decision.

1 recommend that the Commission find no reason to believe that Clinton violated 52 U.S.C.
2 § 30102(e)(1) by failing to timely file her Statement of Candidacy.

3 1. Duration of Clinton's Testing the Waters Activities

4 Testing the waters activities conducted "over a protracted period of time" may indicate
5 that an individual has decided to become a candidate.³⁴ There is no bright-line test for
6 determining what constitutes a protracted period of time, but the Commission has opined that
7 testing the waters activities often begin "well in advance of an election."³⁵

8 The Complaint asserts that that Clinton began testing the waters as early as 2013 — about
9 two years before she announced her candidacy — when she met with political consultants from
10 the Dewey Square Group for a "detailed presentation on preparing for a 2016 presidential
11 campaign."³⁶ There is no information showing that Clinton made any payments in connection
12 with the meeting. The news article cited by the Complaint states that the "hourlong gathering"
13 took place at Clinton's home in Washington and describes the attendees as "a handful of
14 aides."³⁷ It also states that the meeting was organized by "a longtime Clinton intimate also at
15 Dewey Square who had informally become [Clinton's] political eyes and ears of late."³⁸ Clinton
16 contends that it was a meeting with "past supporters" to "discuss the current political

³⁴ 11 C.F.R. §§ 100.72(b)(4); 100.131; *see also* AO 2015-09 at 6 ("[T]he length of time that an individual spends deliberating whether to become a candidate is one factor and does not, in and of itself, determine whether the individual has become a candidate.").

³⁵ Factual & Legal Analysis at 6, MUR 5722 (Friends for Lauzen) (concluding that a poll conducted "to determine the feasibility of a potential run for Congress in an election that was over two years away . . . would still fall within the 'testing the waters' regulation").

³⁶ Compl., Ex. A (Haberman, POLITICO, Jan. 5, 2014) (reporting that Clinton "said little and made no commitments"); *see* Compl. at 2.

³⁷ Compl., Ex. A (Haberman, POLITICO, Jan. 5, 2014); *but see id.* (describing the presenters as "outside her immediate circle").

³⁸ *Id.* There is no indication, from HFA's disclosure reports, that Clinton or HFA made any payments to Dewey Square Group during Clinton's testing the waters phase or during her campaign.

1 environment and a potential run for office,” and denies that it was a testing the waters activity
2 under the Act and Commission regulations.³⁹ In any event, the lack of any alleged subsequent
3 testing the waters activity until January 2015 — about four months before Clinton announced her
4 candidacy — undercuts the assertion that her activities were “protracted.”

5 2. Statements Regarding Clinton’s Potential Candidacy

6 Authorized statements that “refer to [an individual] as a candidate for a particular office”
7 indicate that he or she has decided to become a candidate.⁴⁰ Commentary on matters of public
8 concern does not trigger candidacy.⁴¹ The Complaint alleges that Clinton acted like a candidate
9 when she “weighed in on public issues on social media and during speeches.”⁴² In particular,
10 there is a tweet from Clinton regarding issues being discussed by two Republican presidential
11 candidates.⁴³ Clearly, this type of speech is not indicative of a candidacy.

12 The Complaint further alleges that “individuals connected with Clinton’s campaign . . .
13 generally acknowledge[d]” that she was a candidate.⁴⁴ It points to paraphrased statements made
14 by unidentified Clinton associates who claimed that Clinton had decided to run.⁴⁵ This is not
15 enough to show that Clinton had actually made such a decision. Moreover, those statements are

³⁹ Clinton & HFA Resp. at 5 n.2.

⁴⁰ 11 C.F.R. §§ 100.72(b)(3); 100.131(b)(3).

⁴¹ See, e.g., Factual & Legal Analysis at 9, MUR 6430 (Steven Daines) (finding that commentary in a radio ad on the issue of federal healthcare reform did not trigger candidacy).

⁴² Compl. at 2.

⁴³ *Id.*, Ex. D (Anne Gearan and Dan Balz, *Official or Not, Hillary Clinton Builds a Massive 2016 Team-in-Waiting*, WASH. POST, Feb. 6, 2015) (reporting on a February 2015 tweet responding to comments from Sen. Rand Paul and Gov. Chris Christie in which she stated: “The science is clear: The earth is round, the sky is blue, and #vaccineswork. Let’s protect all our kids. #GrandmothersKnowBest”); see Compl. at 2.

⁴⁴ Compl. at 3.

⁴⁵ E.g., Compl., Ex. E (Mike Allen, *Inside Hillary Clinton’s 2016 Plan*, POLITICO, Jan. 26, 2015) (“Campaign advisers say the likelihood of a campaign . . . went to 100 percent.”).

1 directly contradicted by quoted statements in the same articles attributed to Clinton's authorized
2 spokesperson explaining that Clinton was still deciding.⁴⁶

3 3. Operational Planning

4 Individuals contemplating candidacy are permitted to take certain practical and essential
5 steps to prepare for and evaluate the feasibility of a campaign. In AO 1981-32 (Askew), the
6 Commission concluded that activities undertaken for the purpose of assessing "the potential and
7 mechanics of constructing a national campaign organization" were acceptable testing the waters
8 activities.⁴⁷ The Commission has also expressed the caveat that otherwise permissible testing the
9 waters activities may trigger candidacy when, "in context, [they] represent the establishment of a
10 campaign organization."⁴⁸

11 The Complaint asserts that Clinton's activities prior to April 1, 2014, "include those that
12 could only be campaign related, such as approving a preliminary campaign budget, searching for
13 a campaign headquarters location, and assembling campaign staff"⁴⁹ Clinton reportedly
14 identified or "hired" members of her campaign staff, including the campaign chairman,

⁴⁶ Compl. at 3 n.1 (citing Ruby Cramer, *Future Clinton Campaign Staffers Working as Volunteers*, BUZZFEED NEWS, Mar. 17, 2015) (quote from Clinton spokesperson Nick Merrill stating that, "[s]he hasn't made a decision about running. She is currently 'testing the waters,' as the Federal Election Commission calls it"); Compl., Ex. D (Gearan & Balz, WASH. POST, Feb. 6, 2015) (quote from Merrill including the caveat "if she runs" when describing her potential candidacy); *see also* Compl. at 3 n.1 (citing Haberman, POLITICO, Jan. 7, 2015) (quoting a "Clinton aide" who explained that Clinton was "using this time to look at what components are necessary to build . . . [a] campaign, so that if she decides to run, she'll be ready").

⁴⁷ AO 1981-32 at 2, 4.

⁴⁸ *Id.* at 4.

⁴⁹ Compl. at 2; *see id.*, Ex. E (Allen, POLITICO, Jan. 26, 2015) (reporting, without specifics, that Clinton approved a "preliminary budget" after Christmas 2014); Compl., Ex. D (Gearan & Balz, WASH. POST, Feb. 6, 2015) (reporting that Clinton was "closing in on a New York City campaign headquarters").

1 campaign manager, chief strategist, lead pollster, lead media adviser, communications director,
2 and communications strategist.⁵⁰

3 First, Clinton's apparent approval of a preliminary campaign budget and efforts to locate
4 a possible campaign headquarters appear to constitute preparatory steps. Respondents assert that
5 Clinton merely "sketched out what a budget might look like in order to determine how much
6 funding would be necessary to wage the campaign" and "identified office space that could be
7 used in the event she decided to run."⁵¹ They contend that "understanding the parameters of a
8 potential budget is an essential component of testing the waters."⁵² Respondents also explain
9 that Clinton did not actually sign the lease for her campaign headquarters until April 1, 2015, the
10 day that she claims to have become a candidate.⁵³

11 Second, her identification of potential campaign staff members similarly appears to have
12 been a preparatory step. Clinton maintains that she "spoke with individuals who could play
13 important roles in her campaign if she decided to run," and that this was part of evaluating the
14 feasibility of a potential candidacy.⁵⁴ She contends that "recruiting sought-after staff is often a
15 necessary precondition to becoming a candidate," and points to instances where individuals have

⁵⁰ See, e.g., Compl., Ex. D (Gearan & Balz, WASH. POST, Feb. 6, 2015); see also Compl., Ex. E (Allen, POLITICO, Jan. 26, 2015); Compl. at 3 n.1 (citing Dan Merica, *Top Aide Leaving Foundation to Build Clinton's 2016 Fundraising Team*, CNN, Feb. 9, 2015; Jonathan Martin, *Mandy Grunwald to Join Clinton Team*, N.Y. TIMES, Feb. 5, 2015; Peter Nicholas and Carol E. Lee, *Top White House Official to Leave for Emerging Hillary Clinton Campaign*, WALL ST. J., Feb. 4, 2015); Compl. at 3 (citing Anne Gearan and Philip Rucker, *Hillary Clinton Recruits Chief Strategist, Media Adviser for 2016 Effort*, WASH. POST, Jan. 13, 2015).

⁵¹ Clinton & HFA Resp. at 2. Further, they note that Clinton did not enter into a lease for campaign headquarters until April 1, 2015, when she decided to become a candidate, and that, in any event, entering into a lease does not itself indicate that an individual who is testing the waters has become a candidate. *Id.* at 2, 5.

⁵² *Id.* at 4-5 ("One cannot know whether a campaign is 'feasible' without determining how much the campaign might cost.").

⁵³ *Id.* at 2, 5. It appears that Clinton leased separate office space out of which to conduct her testing the waters activities. HFA Amended 2015 July Quarterly Rpt. at 14,506 (Sept. 3, 2015).

⁵⁴ Clinton & HFA Resp. at 2, 4.

1 decided not to run because "key staff joined rival campaigns."⁵⁵ The alleged facts do not appear
2 to contradict these contentions.

3 The relevant articles generally discuss Clinton's "hiring" of a campaign staff in a
4 forward-looking manner (*e.g.*, "expected," "campaign-manager-in-waiting," "team-in-waiting")
5 and often use ambiguous terms that do not necessarily imply that anyone was officially hired or
6 actually began working in the discussed role (*e.g.*, "tapped," "recruited").⁵⁶ One article states
7 that a Clinton adviser was "putting markers on prospective staff to keep them accessible as he
8 holds off on formal hires."⁵⁷ Some individuals reportedly left their current positions to support
9 Clinton, but there is no indication that any worked on projects related to a campaign.⁵⁸ Clinton
10 was permitted to hire those individuals in a non-campaign role to assist with her testing the
11 waters activities or with her general political activities.⁵⁹ In fact, she acknowledges paying six
12 individuals a total of \$105,655 for reported testing the waters activities.⁶⁰ One article vaguely
13 states, without providing specifics, that Clinton had a team of "unpaid volunteers" who were

⁵⁵ *Id.* at 4 (citing Ashley Parker and Jonathan Martin, *Support Waning, Romney Decides Against 2016 Bid*, N.Y. TIMES, Jan. 30, 2015).

⁵⁶ *See, e.g.*, Compl., Ex. D (Gearan & Balz, WASH. POST, Feb. 6, 2015); Compl., Ex. E (Allen, POLITICO, Jan. 26, 2015); (Rucker & Kane, WASH. POST, Mar. 11, 2015 (cited by Compl., Ex. H (Halper, WEEKLY STANDARD, Mar. 11, 2015))); Compl. at 3 n.1 (citing Maggie Haberman, *Clinton Brings in Mook, Benensen for Likely Team*, POLITICO, Jan. 7, 2015).

⁵⁷ Compl. at 3 n.1 (citing Gabriel Debenedetti and Edward-Issac Dove, *All-Too-Ready for Hillary*, POLITICO, Feb. 18, 2015).

⁵⁸ *Id.* at 2-3. One of the cited articles states that "Clinton has barely begun building her campaign juggernaut, and prospective staffers are getting restless," and that "few of these people have been hired for set roles." *Id.* at 3 n.1 (citing Debenedetti & Dove, POLITICO, Feb. 18, 2015).

⁵⁹ As a well-known politician, Clinton retains a team of political aides, and she apparently requires a team to accompany her on speaking engagements. Compl., Ex. A (Haberman, POLITICO, Jan. 5, 2014) (describing Clinton's "team of paid political advisers"); L. Ian MacDonald, *iPOLITICS*, Oct. 5, 2014).

⁶⁰ HFA Amended 2015 July Quarterly Rpt. at 14,511-14; 14,518-19; 14,566-71 (Sept. 3, 2015). This includes payments to an LLC apparently operated by a consumer marketing specialist who assisted Clinton.

1 “building her all but certain presidential bid” — a Clinton spokesperson responded to the article
2 by claiming that the volunteers were helping her decide whether she should run.⁶¹

3 Also, there is no indication from the alleged facts that Clinton, based on the aggregate of
4 all her operational planning, had established a campaign organization. One article states that
5 Clinton “has been operating without a full team.”⁶² Another states that “despite widespread
6 assumptions that Clinton has assembled a campaign juggernaut ready to be unveiled as soon as
7 she makes her White House run official, the reality is that she has little more than a budding
8 operation that’s far from set.”⁶³ The same article cites to a “Democrat familiar with the process,”
9 who claimed that the notion Clinton had built “some sort of campaign-in-waiting,” was untrue,
10 and a “Democratic operative” asserted that potential donors “are getting antsy” and Clinton’s
11 future team “want[s] to start working.”⁶⁴ Based on the available information, it does not appear
12 that Clinton moved beyond preparatory steps for a potential campaign.

13 4. Support From Unauthorized Committees

14 The Complaint alleges that Clinton’s involvement with unauthorized committees is
15 indicative of her decision to become a candidate.⁶⁵ To show that Clinton endorsed their efforts,
16 the Complaint asserts that Clinton was involved in mediating a dispute between Ready PAC and

⁶¹ Compl. at 3 n.1 (citing Cramer, BUZZFEED NEWS, Mar. 17, 2015). It appears that the author was assuming that Clinton’s staff was developing a campaign rather than merely evaluating the feasibility of a campaign.

⁶² Rucker & Kane, WASH. POST, Mar. 11, 2015 (cited by Compl., Ex. H (Halper, WEEKLY STANDARD, Mar. 11, 2015)).

⁶³ Compl. at 3 n.1 (citing Debenedetti & Dove, POLITICO, Feb. 18, 2015).

⁶⁴ *Id.*; but see Compl., Ex. D (Gearan & Balz, WASH. POST, Feb. 6, 2015) (vaguely stating that Clinton was “locking in wealthy donors”); Compl., Ex. E (Allen, POLITICO, Jan. 26, 2015) (reporting, but without providing any specifics, that a “component of Hillary Clinton’s emerging strategy involves quietly but aggressively courting key endorsers from the left, who could help increase progressives’ comfort level and take the wind out of a potential challenge”); cf. AO 1982-03 at 3 (concluding that “the exemptions are available to determine ‘political support’ for a potential candidacy).

⁶⁵ Compl. at 4, 8.

Priorities USA,

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First, there is no indication that the alleged mediation of a dispute between Ready PAC and Priorities USA was indicative of Clinton's decision to become a candidate. The same article that describes this occurrence also states that the groups only had her "tacit approval," and that unauthorized committees were "jockeying to be part of the Clinton movement but operating beyond her immediate direction and control."⁶⁷ Moreover, it states that, when deciding how to intervene in the row between Ready PAC and Priorities USA, Clinton made sure "to keep her team distant from the work of the super PACs to avoid brushing up against rules forbidding coordination."⁶⁸ It is unclear whether Clinton or her agents actually provided the groups with any material support in deciding on a mutual strategy.

⁶⁶ *Id.* at 4. The Complaint further asserts that "[a]ll twenty-nine of the Ready for Hillary staffers will have an opportunity to officially join Clinton's campaign, with six already being hired." *Id.*; *id.*, Ex. I (Annie Karni, *Ready for Hillary Staff Join Clinton Campaign*, POLITICO, Apr. 1, 2015). The cited article was published the same day that Clinton says she decided to become a candidate.

⁶⁷ Compl., Ex. A (Haberman, POLITICO, Jan. 5, 2014).

⁶⁸ *Id.*

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9 Furthermore, the Complaint generally asserts that unauthorized political committees were
10 "working on [Clinton's] behalf, and essentially performing tasks that are necessary for a
11 campaign."⁷³ However, the Complaint does not substantiate this allegation with any specifics
12 about the work performed by the groups.⁷⁴ Without more, there is no basis to conclude that
13 Clinton's support from those committees indicated that she decided to become a candidate.

⁷³ Compl. at 4.

⁷⁴ *But see* discussion *infra* Part III.D (describing how Ready PAC hoped to gather names of supporters that it could pass along to Clinton's campaign). Even if this was one of Ready PAC's goals, there is no suggestion that Clinton or her agents directed Ready PAC. Indeed, one of the cited articles states that it was "far from certain" that the group's data would be welcomed by a Clinton campaign. Compl., Ex. A (Haberman, POLITICO, Jan. 5, 2014).

5. Consultations With Marketing and Branding Experts

In AO 1981-32, the Commission concluded that the hiring of political consultants “for the purpose of assisting with advice on the potential and mechanics of constructing a national campaign organization,” was within the scope of testing the waters.⁷⁵ However, such activities may not be “carried out in a fashion indicating that a campaign organization is actually being established, rather than remaining a matter for consultation.”⁷⁶

The Complaint argues that Clinton’s decision to consult with marketing and branding experts indicates that she decided to run for president.⁷⁷ Clinton reportedly hired a firm to conduct self-opposition research, “considered critical in campaigns,”⁷⁸ and hired two sought-after consumer marketing specialists “to refresh the well-established brand for tomorrow’s marketplace . . . and help her make emotional connection with voters.”⁷⁹ The cited articles tend to characterize the experts’ work as campaign-related, but, at the same time, they admit that the scope of their work was “unclear.”⁸⁰ One of the articles states that Clinton hired the marketing specialists “onto her team of trusted political advisers,” not necessarily onto her campaign.⁸¹

⁷⁵ AO 1981-32 at 2, 4.

⁷⁶ *Id.* at 5.

⁷⁷ Compl. at 7.

⁷⁸ *Id.*, Ex. B (Maggie Haberman, *Hillary Clinton Begins Process of Vetting — Herself*, N.Y. TIMES, Feb. 20, 2015).

⁷⁹ Compl., Ex. C (Phillip Rucker and Anne Gearan, *The Making of Hillary 5.0 — Marketing Wizards Help Re-Imagine Clinton Brand*, WASH. POST, Feb. 21, 2015). Clinton reportedly hired Wendy Clark, who took an unpaid leave from her position as president of brands and strategic marketing for carbonated beverages in North America at Coca-Cola, and Roy Spence, co-founder and chairman of GSD&M who has created well-known advertising campaigns — they are described as “two of corporate America’s branding wizards.” *Id.*

⁸⁰ Compl., Ex. B (Haberman, N.Y. TIMES, Feb. 20, 2015); *see* Compl., Ex. C (Rucker & Gearan, WASH. POST, Feb. 21, 2015) (“But the plans for Clinton’s rebranding are not yet clear.”).

⁸¹ Compl., Ex. C (Rucker & Gearan, WASH. POST, Feb. 21, 2015).

1 Clinton claims that she “commissioned . . . self-research” and “consulted with campaign
2 and other professionals” as part of deciding whether to become a candidate.⁸² She contends that
3 this “is precisely the type of activity that the FEC contemplates will occur during the testing-the-
4 waters phase.”⁸³ Clinton’s explanation appears to be credible. It is possible that she hired these
5 consultants for an opinion about her “potential vulnerabilities” as she decided whether to run for
6 president.⁸⁴ Indeed, one of the cited articles states that Clinton’s “own history shows the
7 potential for peril,” and talks about how, in 2008, “Clinton’s rebranding went badly, starting with
8 a misreading of the zeitgeist . . . [that was] Obama’s promise of hope and change.”⁸⁵
9 Furthermore, the work provided by marketing and branding experts would be of use to Clinton
10 with respect to her ongoing career as a public figure and in-demand speaker.

11 In AO 1981-32, the Commission opined that it was permissible for an individual to
12 “ascertain” whether the public perceived him as a presidential contender, as long as steps were
13 not taken to “project [him] to the public” as a contender.⁸⁶ There are no facts on record showing
14 that Clinton implemented any of the advice she may have received from the experts. In AO
15 1982-03, the Commission stated that the line between assessing public support and acting on that
16 information is demonstrating by moving “into the process of planning and scheduling public
17 activities designed to heighten . . . political appeal to the electorate.”⁸⁷ Again, there are no facts

⁸² Clinton & HFA Resp. at 2. HFA reported that Clinton paid what appears to be Wendy Clark’s LLC at total of \$29,166 for “strategic consulting services.” HFA Amended 2015 July Quarterly Rpt. at 14,518-19 (Sept. 3, 2015). Clinton also directly paid Clark \$744 for “employee benefits.” *Id.* at 14,511.

⁸³ Clinton & HFA Resp. at 4.

⁸⁴ Compl., Ex. B (Herman, N.Y. TIMES, Feb. 20, 2015).

⁸⁵ Compl., Ex. C (Rucker & Gearan, WASH. POST, Feb. 21, 2015).

⁸⁶ AO 1981-32 at 4-5.

⁸⁷ AO 1982-03 at 4.

1 on record showing that Clinton engaged in such public activities. Without more, there is no basis
2 to conclude that Clinton's alleged hiring of marketing and branding experts was necessarily
3 indicative of a decision to run for president.

4 6. Conclusion

5 The alleged facts regarding Clinton's duration of testing the waters activities, public
6 statements, operational planning, support from unauthorized political committees, and hiring of
7 marketing and branding experts do not indicate the Clinton decided to become a candidate prior
8 to April 1, 2015. Her alleged activities did not "take on a partisan political quality which would
9 indicate that a decision has been made to seek nomination for election, or election, to a Federal
10 office."⁸⁸ Therefore, we recommend that the Commission find no reason to believe that Clinton
11 violated 52 U.S.C. § 30102(e)(1) by failing to timely file her Statement of Candidacy.

12 **B. There is No Reason to Believe That Clinton Accepted Excessive or Prohibited**
13 **Contributions in Connection With Her Speaking Engagements**

14 The Act defines a contribution as "anything of value made by any person for the purpose
15 of influencing any election for Federal office."⁸⁹ Moreover, the Act places limits on the amounts
16 of contributions that candidates may accept, and prohibits the acceptance of contributions from
17 corporations and foreign nationals.⁹⁰ The Commission's regulations state that income received
18 during an election cycle, including a salary or other earned income that the candidate receives for
19 *bona fide* employment, is considered the "personal funds" of a candidate and not a contribution
20 subject to the limits and prohibitions of the Act.⁹¹

⁸⁸ AO 1981-32 at 4.

⁸⁹ 52 U.S.C. § 30101(8)(A)(i).

⁹⁰ *Id.* §§ 30116(a), 30118(a), 30121(a).

⁹¹ 11 C.F.R. § 100.33(b); *see also* 11 C.F.R. § 113.1(g)(6)(iii).

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1 The Complaint alleges that the large payments Clinton received from apparent domestic
2 and foreign corporations for speaking engagements prior to announcing her candidacy were
3 contributions because Clinton was funding “her non-declared presidential campaign,” and, in
4 light of their size and origins, were both excessive and prohibited.⁹² Clinton maintains that this
5 was part of her “regular, ongoing business” that she continued while she was deciding whether to
6 run for president and, therefore, none of the transactions were contributions.⁹³ Indeed, one of the
7 cited articles states that Clinton gave speeches “to dozens of industry associations, Wall Street
8 banks, universities and other groups” and used a speaking agency to manage her engagements.⁹⁴
9 There is no indication that the entities paid Clinton to influence her potential campaign or that
10 Clinton engaged in any campaign-related or testing the waters activity during the course of her
11 speeches.⁹⁵ Accordingly, it appears that the payments were *bona fide*. Therefore, we recommend
12 that the Commission find no reason to believe that Clinton and HFA violated 52 U.S.C.
13 §§ 30116(a), 30118(a), or 30121(a)(2) by accepting excessive and prohibited contributions.

14 **C. Alleged Coordination With Unauthorized Committees**

15 The Act prohibits any person from making, and any candidate or committee from
16 knowingly accepting, excessive contributions.⁹⁶ In addition, the Act provides that “expenditures
17 made by any person in cooperation, consultation, or concert, with, or at the request or suggestion

⁹² Compl. at 3-4, 8; *see id.*, Ex. F (Chozick, N.Y. TIMES, Feb. 24, 2015).

⁹³ *See Clinton & HFA Resp.* at 5-6.

⁹⁴ Compl. at 3 (citing Helderman & Rucker, WASH. POST, Jan. 20, 2015).

⁹⁵ *Cf.* Compl., Ex. F (Chozick, N.Y. TIMES, Feb. 24, 2015) (describing one of her speeches as a “keynote address” at a women’s conference); Compl. at 3 (citing Alex Seitz-Wald, *Clinton Mixes Help for Democrats with Paid Gigs*, MSNBC, Oct. 2, 2014) (describing other speeches as keynote addresses at various conferences). Moreover, the cited articles report that Clinton often donated her fees to the Clinton foundation. Compl. at 3 (citing Helderman & Rucker, WASH. POST, Jan. 20, 2015); Compl. at 3 (citing Seitz-Wald, MSNBC, Oct. 2, 2014).

⁹⁶ 52 U.S.C. § 30116(a), (f).

1 of, a candidate, his authorized political committee, or their agents” shall be considered a
2 contribution to such candidate.⁹⁷ An expenditure for a communication is “coordinated,” and
3 therefore treated as a contribution under the Act, when the communication: (1) is paid for, in
4 whole or part, by a person other than the candidate, committee, or party; (2) satisfies at least one
5 of the content standards described in 11 C.F.R. § 109.21(c); and (3) satisfies at least one of the
6 conduct standards described in 11 C.F.R. § 109.21(d).⁹⁸ The Complaint alleges that “Clinton has
7 taken actions that constitute prohibited coordination with the super PACs from which she
8 benefits.”⁹⁹

9 1. There is No Reason to Believe That Clinton and HFA Impermissibly
10 Coordinated With Ready PAC and Priorities USA

11 The Complaint alleges that Clinton was involved in mediating tension between Ready
12 PAC and Priorities USA.¹⁰⁰ However, the Complaint does not provide any information
13 regarding expenditures that might have been coordinated.¹⁰¹ Moreover, there is no indication
14 that Clinton or her agents cooperated, consulted, requested, or suggested that either committee
15 make any expenditures. Rather, the cited article describes one phone call between a Priorities
16 USA official and Clinton aide Huma Abedin which apparently resulted in an edict from Clinton
17 that things “needed to be sorted out.”¹⁰² The article specifically states that Clinton “wanted to
18 keep her team distant from the work of the super PACs to avoid brushing up against the rules

⁹⁷ *Id.* § 30116(a)(7)(B)(i); *see also* 11 C.F.R. § 109.20.

⁹⁸ 11 C.F.R. § 109.21(a)(1)-(3).

⁹⁹ Compl. at 8.

¹⁰⁰ *Id.* at 4, 8.

¹⁰¹ Ready PAC denies that it made any communications that would satisfy the content and conduct prongs of the Commission’s regulation. Ready PAC Resp. at 5.

¹⁰² Compl., Ex. A (Haberman, POLITICO, Jan. 5, 2014); *see* Compl. at 4.

1 forbidding coordination.”¹⁰³ Therefore, we recommend that the Commission find no reason to
2 believe that Ready PAC made, and Clinton and HFA knowingly accepted, excessive
3 contributions.¹⁰⁴

¹⁰³ Compl., Ex. A (Haberman, POLITICO, Jan. 5, 2014).

¹⁰⁴ Priorities USA was not notified as a respondent due to an administrative oversight. Given the lack of information supporting the allegation, we do not recommend that the Commission notify the committee at this time. We therefore make no recommendation as to Priorities USA.

D. There is Reason to Believe That the Series of Email “Swaps” Resulted in an Excessive In-Kind Contribution

The Commission has long recognized that committees may sell, rent, or exchange their lists for fair market value.¹⁰⁹ Moreover, the Commission has opined that list rentals shall not be treated as contributions so long as the list is transferred “at the usual and normal charge in a *bona fide*, arm’s-length transaction” and is “used in a commercially reasonable manner.”¹¹⁰ The provision of any goods or services without charge or at a charge that is less than the usual and normal charge is an in-kind contribution, the amount of which is the difference between the usual and normal charge and the amount charged.¹¹¹

The Complaint alleges that a series of email list “swaps,” which reportedly occurred several weeks after Clinton announced her candidacy, resulted in HFA knowingly accepting an excessive in-kind contribution in the form of Ready PAC’s email list.¹¹² It appears that Ready PAC swapped lists with an “independent group” and that entity, in turn, swapped lists with HFA.¹¹³ Ready PAC reportedly spent upwards of \$15 million to develop the list of 4 million supporters over the course of two years.¹¹⁴

¹⁰⁹ E.g., Advisory Op. 2014-09 at 4 n.6 (REED Marketing) (“AO 2014-09”); Advisory Op. 2014-06 at 8 (Ryan, Ryan for Congress, and Prosperity Action); Advisory Op. 2002-14 at 5 (Libertarian Nat’l Comm.) (“AO 2002-14”); Advisory Op. 1982-41 at 2 (Dellums) (“AO 1982-41”).

¹¹⁰ AO 2014-09 at 4 n.6 (permitting a “contractually limited, commercially reasonable exchange” of a marketing firm’s services for a political committee’s mailing list); AO 1982-41 at 2 (“[A]ssuming such multi-party exchanges are routine and usual in the list brokering industry, the Commission concludes that this exchange would not result in a contribution, but is instead a bargained-for exchange of consideration in a commercial transaction.”).

¹¹¹ 11 C.F.R. § 100.52(d)(1) (providing “mailing lists” as an example of goods or services).

¹¹² Supp. Compl. at 1-2; *see* Supp. Compl., Ex. A (Karni, POLITICO, May 30, 2015) (describing Ready PAC’s email list as a “data gold mine that will immediately bolster [Clinton’s] fundraising and organizing efforts”).

¹¹³ *See* Supp. Compl., Ex. A (Karni, POLITICO, May 30, 2015).

¹¹⁴ Compl., Ex. G (Cameron Joseph, *Ready for Hillary Ready to Step Aside as She Prepares Campaign*, THE HILL, Mar. 22, 2015); Supp. Compl., Ex. A (Karni, POLITICO, May 30, 2015).

1 Ready PAC appears to acknowledge the swap and contends that it “exchanged lists . . .
2 pursuant to written agreements that ensured both entities received equal value.”¹¹⁵ HFA
3 acknowledges the swap and contends that “the names exchanged by HFA had an equal market
4 value to the names received by HFA.”¹¹⁶ Neither respondent provides any specific information
5 regarding the identity of the “independent group” or the values of the exchanged lists.

6 The available information suggests that the series of transactions that resulted in HFA
7 obtaining Ready PAC’s email list may not have been *bona fide*.¹¹⁷ A March 2015 article,
8 published a few weeks before Clinton announced her candidacy, reported that Ready PAC had
9 “worked up plans to share [its] full supporter list with the Clinton campaign either through a list
10 rental . . . or list sharing.”¹¹⁸ The same article noted that Ready PAC was “planning to dissolve
11 as soon as possible after Clinton formally announces,” and quoted the group’s executive director
12 as saying “[w]hen she announces a decision, our work will be complete.”¹¹⁹

13 Ready PAC admits that, after Clinton announced her candidacy, it “effectively shut down
14 operations.”¹²⁰ Yet, without any ongoing purpose, the committee apparently exchanged email
15 lists with the unidentified independent group. Based on these facts, it appears that Ready PAC’s
16 intention was to ultimately convey its list to HFA. Moreover, there is information suggesting

¹¹⁵ Ready PAC Supp. Resp. at 2.

¹¹⁶ Clinton & HFA Supp. Resp. at 1.

¹¹⁷ Cf. Advisory Op. 1983-02 (Philadelphia Electric) (concluding that, in the context of an exchange or sale, “each list’s value, at least in part, is determined on the basis of the committee’s political fundraising efforts or other political use of the list”).

¹¹⁸ Compl., Ex. G (Joseph, THE HILL, Mar. 22, 2015); *see also* Compl., Ex. A (Haberman, POLITICO, Jan. 5, 2014) (“Ready for Hillary hopes to make its data available to a 2016 Clinton campaign.”).

¹¹⁹ *Id.*

¹²⁰ Ready PAC Resp. at 2.

1 that HFA may have been aware of the arrangement.¹²¹ Further, there are questions as to whether
2 HFA's list and Ready PAC's list were of equal value. The news article that reported on the
3 alleged list swaps claimed that "senior campaign officials admitted they were relying in part on
4 an outdated supporter list from 2008" and described a campaign volunteer's "unproductive"
5 phone-banking session using names from the outdated list.¹²²

6 Therefore, we recommend that the Commission find reason to believe that HFA, Ready
7 PAC, and an unknown respondent violated 52 U.S.C. § 30116(a), (f) by making and knowingly
8 accepting an excessive in-kind contribution.

9 IV. PROPOSED INVESTIGATION

10 We propose to conduct additional fact finding regarding the series of email list swaps
11 involving Ready PAC, HFA, and an unidentified "independent group" for the purpose of
12 determining whether the transactions were *bona fide* and ascertaining the values of the
13 exchanged lists. We will seek to conduct the investigation through voluntary means, but we
14 recommend that the Commission authorize the use of compulsory process.

15 V. RECOMMENDATIONS

- 16 1. Find no reason to believe that Hillary Rodham Clinton violated 52 U.S.C.
17 § 30102(e)(1) by failing to timely file her Statement of Candidacy;
18
- 19 2. Find no reason to believe that Hillary Rodham Clinton and Hillary for America
20 and Jose H. Villarreal in his official capacity as treasurer violated 52 U.S.C.
21 §§ 30116(f), 30118(a), or 30121(a)(2) by accepting excessive and prohibited
22 contributions in connection with Clinton's paid speeches;
23
- 24 3. Find no reason to believe that Hillary Rodham Clinton, Hillary for America and
25 Jose H. Villarreal in his official capacity as treasurer, and Ready PAC and Amy

¹²¹ Cf. Supp. Compl., Ex. A (Karni, POLITICO, May 30, 2015) ("But for the first six weeks of Clinton's 2016 presidential campaign, that data trove was unavailable and tied up with lawyers reviewing the options available to the campaign: they could trade an old list for the new list . . .").


¹²² Supp. Compl., Ex. A (Karni, POLITICO, May 30, 2015).

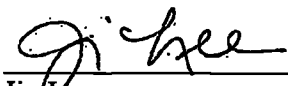
Wills Gray in her official capacity as treasurer violated 52 U.S.C. § 30116(a), (f) by making and knowingly accepting excessive contributions in connection with coordinated communications;

5. Find reason to believe that Hillary for America and Jose H. Villarreal in his official capacity as treasurer, Ready PAC and Amy Wills Gray in her official capacity as treasurer, and an unknown respondent violated 52 U.S.C. § 30116(a), (f) by making and knowingly accepting an excessive contribution in connection with Ready PAC's email list;
6. Approve the attached Factual and Legal Analyses;
7. Authorize the use of compulsory process; and
8. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

Date: 5/18/17


Kathleen M. Guith
Associate General Counsel


Jin Lee
Acting Assistant General Counsel


Claudio J. Pavia
Attorney

- 1 Attachments:
- 2 Factual and Legal Analysis for Clinton and Hillary for America
- 3 Factual and Legal Analysis for Ready PAC

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II. FACTUAL BACKGROUND

A. Clinton's Candidacy

On April 12, 2015, Clinton publicly announced her candidacy for president.² The next day, she filed a Statement of Candidacy with the Commission and declared HFA as her principal campaign committee with Jose H. Villarreal as treasurer.³ Clinton asserts that she became a candidate on April 1, 2015, the same day that she entered into a lease for space in Brooklyn, New York to use as her campaign headquarters.⁴

The Complaint alleges that the "duration and substance" of Clinton's activities indicate that she decided to become a candidate prior to April 1, 2015, and, therefore, violated the Act by failing to timely file her Statement of Candidacy.⁵ The Complaint asserts that Clinton met with campaign consultants nearly two years before she announced her candidacy, made or authorized statements that suggested she was a candidate, approved a preliminary campaign budget, searched for campaign headquarters, assembled a campaign staff, encouraged several unauthorized groups that supported her potential candidacy, and hired marketing and branding experts.

In response, Clinton argues that her official registration was within the Act's 15-day window for submitting a Statement of Candidacy after becoming a candidate.⁶ She concedes that she "spent some time exploring whether to run for President," but maintains that all such

² Clinton Resp. at 2 (June 10, 2015). HFA adopted the Clinton Response, by letter, on August 3, 2015. Hereinafter, that Response is referred to as "Clinton & HFA Resp."

³ Hillary Clinton Statement of Candidacy (Apr. 13, 2015); *see also* HFA Statement of Org. (Apr. 13, 2015).

⁴ Clinton & HFA Resp. at 2.

⁵ Compl. at 7 (Apr. 17, 2015); *see also* 52 U.S.C. § 30102(c)(1).

⁶ Clinton & HFA Resp. at 5.

activities complied with the Commission's regulations for "testing the waters" of a potential candidacy.⁷ Her testing the waters activities began on January 12, 2015, according to the first disclosure report that HFA filed with the Commission.⁸

B. Clinton's Speaking Engagements

Prior to announcing her candidacy, and during her testing the waters phase, Clinton was paid substantial amounts for various speaking engagements.⁹ For example, she received an estimated \$300,000 from a women's membership organization, \$300,000 from a college, and \$250,000 from an Ottawa-based think tank.¹⁰ The Complaint alleges that Clinton used her public speaking appearances "to fund her non-declared presidential campaign," and therefore accepted excessive and prohibited contributions.¹¹ Clinton maintains that this was part of her "regular, ongoing business" while deciding whether to run for president.¹²

⁷ *Id.* at 2, 5.

⁸ Between January 12, 2015, and March 31, 2015, Clinton spent \$173,066 on items such as "Payroll & Benefits," "Legal Services," "Office Furniture," "Rent," "Strategic Consulting Services," and "Travel." HFA Amended 2015 July Quarterly Rpt. at 14,499-500; 14,505-08; 14,511-16; 14,518-19; 14,566-71 (Sept. 3, 2015). Clinton self-financed her activities and paid vendors directly, which HFA disclosed as in-kind contributions. *Id.* at 14,499; 14,505-07; 14,510-12; 14,518; 14,565.

⁹ Compl. at 3 (citing Rosalind S. Helderman and Philip Rucker, *Romney's Speaking Fee at Public University is \$50,000, Far Less than Clinton's*, WASH. POST, Jan. 20, 2015) (reporting that Clinton "has spoken to dozens of industry associations, Wall Street banks, universities and other groups").

¹⁰ Compl., Ex. F (Amy Chozick, *Precampaign Costs Mounting, Clinton Gets a Silicon Valley Paycheck*, N.Y. TIMES, Feb. 24, 2015); Compl. at 3 (citing Helderman & Rucker, WASH. POST, Jan. 20, 2015); Compl. at 4 (citing L. Ian MacDonald, *Clinton Speech in Ottawa Offers New Life to Old Friendship*, IPOLITICS, Oct. 5, 2014).

¹¹ Compl. at 3, 7-8; *see also* 52 U.S.C. §§ 30116(f), 30118(a), 30121(a)(2).

¹² *See* Clinton & HFA Resp. at 5-6.

C. Alleged Coordination With Unauthorized Committees

Clinton was allegedly supported by unauthorized committees “working on her behalf, and essentially performing tasks that are necessary for a campaign.”¹³ First, in early 2013, Huma Abedin, one of Clinton’s closest aides, was reportedly contacted by someone from Priorities USA regarding “trouble brewing” between Priorities USA and Ready PAC, seeking guidance on how the groups should work together.¹⁴ The call reportedly “touched off a larger debate in Clinton’s circle” and “Clinton herself was forced to grapple with the run-in between the two groups.”¹⁵ There is no indication regarding how Clinton or Abedin responded, but the cited news article states that Ready PAC and Priorities USA subsequently resolved their conflict.¹⁶

The Complaint alleges that Clinton or her agents impermissibly coordinated with those unauthorized committees.¹⁷ Clinton denies that there was impermissible coordination.¹⁸

D. HFA’s Receipt of Ready PAC’s Email List

The Complaint alleges that HFA received an excessive in-kind contribution when it obtained Ready PAC’s email list in May 2015, after Clinton announced her candidacy.¹⁹ HFA

¹³ Compl. at 4.

¹⁴ Compl., Ex. A (Maggie Haberman, *Hillary Clinton’s Shadow Campaign*, POLITICO, Jan. 5, 2014). Priorities USA was an independent-expenditure-only political committee that formerly supported Barack Obama’s 2012 candidacy but “was in discussions to reinvent itself as a pro-Hillary Clinton endeavor.” *Id.*

¹⁵ *Id.*

¹⁶ *See id.* (“Eventually they settled on a solution: Ready for Hillary would focus on collecting and analyzing voter data, accepting donations up to \$25,000. Priorities would be the super PAC for mega-donors, working solely on paid advertising.”).

¹⁷ Compl. at 8; Supp. Compl. at 2 (June 8, 2015).

¹⁸ *See Clinton & HFA Resp.* at 5-6.

¹⁹ Supp. Compl. at 2.

1 reportedly acquired the email list through a "swap" with "another independent group."²⁰ HFA
2 acknowledges having exchanged email lists — apparently, Ready PAC exchanged its email list
3 with the independent group which, in turn, exchanged the list with HFA.²¹ However, HFA
4 argues that no contribution resulted because the lists involved in the swap agreements were of
5 equal market value.²²

6 **III. LEGAL ANALYSIS**

7 **A. There is No Reason to Believe That Clinton Failed to Timely File Her**
8 **Statement of Candidacy**

9 An individual becomes a candidate under the Act if: (a) such individual receives
10 contributions or makes expenditures in excess of \$5,000, or (b) such individual gives his or her
11 consent to another person to receive contributions or make expenditures on behalf of such
12 individual and if such person has received such contributions or has made such expenditures in
13 excess of \$5,000.²³ Once the \$5,000 threshold has been met, the candidate has fifteen days to
14 designate a principal campaign committee by filing a Statement of Candidacy with the
15 Commission.²⁴ The principal campaign committee must file a Statement of Organization within
16 ten days of its designation,²⁵ and must file disclosure reports with the Commission in accordance
17 with 52 U.S.C. § 30104(a) and (b).²⁶

²⁰ See *id.*, Ex. A (Annie Karni, *Hillary Clinton Campaign Scores Ready for Hillary Email List*, POLITICO, May 30, 2015).

²¹ Clinton & HFA Supp. Rcsps. at 1 (Aug. 3, 2015).

²² *Id.* at 1.

²³ 52 U.S.C. § 30101(2).

²⁴ *Id.* § 30102(c)(1); 11 C.F.R. § 101.1(a).

²⁵ See 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1(a).

²⁶ See, e.g., Factual and Legal Analysis at 6, MUR 6735 (Joseph A. Sestak); Factual and Legal Analysis at 5, MUR 6449 (Jon Bruning); Factual and Legal Analysis at 2, MUR 5363 (Alfred C. Sharpton).

1 The Commission has established limited "testing the waters" exemptions that permit an
2 individual to test the feasibility of a campaign for federal office without becoming a candidate
3 under the Act.²⁷ These exemptions exclude from the definition of "contribution" and
4 "expenditure" those funds received and payments made solely to determine whether an
5 individual should become a candidate.²⁸ These regulations seek to draw a distinction between
6 activities directed to an evaluation of the feasibility of one's candidacy and conduct signifying
7 that a decision to become a candidate has been made.²⁹ Testing the waters activities include, but
8 are not limited to, payments for polling, telephone calls, and travel, and only funds permissible
9 under the Act may be used for such activities.³⁰ An individual who is testing the waters need not
10 register or file disclosure reports with the Commission unless and until the individual
11 subsequently decides to run for federal office.³¹

12 The testing the waters exemption is not available to individuals who have made a
13 decision to become a candidate.³² Commission regulations set forth a non-exhaustive list of
14 activities that indicate that an individual is no longer testing the waters and has decided to
15 become a candidate. Such indicia include: (1) using general public political advertising to
16 publicize his or her intention to campaign for federal office; (2) raising funds in excess of what
17 could reasonably be expected to be used for exploratory activities or undertaking activity
18 designed to amass campaign funds that would be spent after he or she becomes a candidate; (3)

²⁷ See 11 C.F.R. §§ 100.72 and 100.131; Factual and Legal Analysis at 7, MUR 6775 (Hillary Clinton); Factual and Legal Analysis at 8, MUR 6776 (Niger Innis); Factual and Legal Analysis at 6, MUR 6735 (Joseph A. Scstak).

²⁸ See 11 C.F.R. §§ 100.72(a); 100.131(a).

²⁹ See Advisory Op. 1981-32 (Askew) ("AO 1981-32").

³⁰ *Id.*

³¹ *Id.*; see also Advisory Op. 2015-09 (Senate Maj. PAC, *et al.*) ("AO 2015-09").

³² See AO 2015-09 at 5. See also Payments Received for Testing the Waters Activities, 50 Fed. Reg. 9992, 9993 (Mar. 13, 1985) (exemption "explicitly limited 'solely' to activities designed to evaluate a potential candidacy").

1 making or authorizing written or oral statements that refer to him or her as a candidate for a
2 particular office; (4) conducting activities in close proximity to the election or over a protracted
3 period of time;³³ and (5) taking action to qualify for the ballot under state law.³⁴

4 The Complaint alleges that Clinton "made the decision" to become a candidate prior to
5 April 1, 2015, because she conducted activities that were "only relevant to a campaign."³⁵
6 However, it appears that Clinton's alleged activities were reasonably consistent with testing the
7 waters of a potential candidacy and with Clinton's ongoing business as a public figure.
8 Moreover, Clinton's alleged activities, viewed as a whole, do not suggest that she had created a
9 campaign structure. Further, there is no indication that Clinton raised funds in excess of what
10 could reasonably be expected for be used to explore a potential candidacy. Not only does the
11 available information fail to show that Clinton had decided to become a candidate, there are
12 questions about the credibility of the alleged facts.³⁶ Therefore, as fully explained below, the
13 Commission finds no reason to believe that Clinton violated 52 U.S.C. § 30102(e)(1) by failing
14 to timely file her Statement of Candidacy.

³³ The Commission has advised that there is no specific time limit for such activities, and the length of time spent testing the waters is but one factor in determining whether an individual becomes a candidate. AO 2015-09 at 6.

³⁴ 11 C.F.R. §§ 100.72(b), 100.131(b).
³⁵ Compl. at 7.

³⁶ The allegations are almost entirely based on paraphrased statements vaguely attributed to individuals "familiar" or "in close contact" with Clinton's activities who describe her activities in general terms without reference to specific examples. Quoted statements and other descriptions in those same news articles generally maintain that Clinton was still deciding whether to run and that her activities, and those of her associates, were in furtherance of helping her make that decision.

1. Duration of Clinton's Testing the Waters Activities

Testing the waters activities conducted "over a protracted period of time" may indicate that an individual has decided to become a candidate.³⁷ There is no bright-line test for determining what constitutes a protracted period of time, but the Commission has opined that testing the waters activities often begin "well in advance of an election."³⁸

The Complaint asserts that that Clinton began testing the waters as early as 2013 — about two years before she announced her candidacy — when she met with political consultants from the Dewey Square Group for a "detailed presentation on preparing for a 2016 presidential campaign."³⁹ There is no information showing that Clinton made any payments in connection with the meeting. The news article cited by the Complaint states that the "hourlong gathering" took place at Clinton's home in Washington and describes the attendees as "a handful of aides."⁴⁰ It also states that the meeting was organized by "a longtime Clinton intimate also at Dewey Square who had informally become [Clinton's] political eyes and ears of late."⁴¹ Clinton contends that it was a meeting with "past supporters" to "discuss the current political environment and a potential run for office," and denies that it was a testing the waters activity

³⁷ 11 C.F.R. §§ 100.72(b)(4); 100.131; *see also* AO 2015-09 at 6 ("[T]he length of time that an individual spends deliberating whether to become a candidate is one factor and does not, in and of itself, determine whether the individual has become a candidate.").

³⁸ Factual & Legal Analysis at 6, MUR 5722 (Friends for Lauzen) (concluding that a poll conducted "to determine the feasibility of a potential run for Congress in an election that was over two years away . . . would still fall within the 'testing the waters' regulation").

³⁹ Compl., Ex. A (Haberman, POLITICO, Jan. 5, 2014) (reporting that Clinton "said little and made no commitments"); *see* Compl. at 2.

⁴⁰ Compl., Ex. A (Haberman, POLITICO, Jan. 5, 2014); *but see id.* (describing the presenters as "outside her immediate circle").

⁴¹ *Id.* There is no indication, from HFA's disclosure reports, that Clinton or HFA made any payments to Dewey Square Group during Clinton's testing the waters phase or during her campaign.

1 under the Act and Commission regulations.⁴² In any event, the lack of any alleged subsequent
2 testing the waters activity until January 2015 — about four months before Clinton announced her
3 candidacy — undercuts the assertion that her activities were “protracted.”

4 2. Statements Regarding Clinton’s Potential Candidacy

5 Authorized statements that “refer to [an individual] as a candidate for a particular office”
6 indicate that he or she has decided to become a candidate.⁴³ Commentary on matters of public
7 concern does not trigger candidacy.⁴⁴ The Complaint alleges that Clinton acted like a candidate
8 when she “weighed in on public issues on social media and during speeches.”⁴⁵ In particular,
9 there is a tweet from Clinton regarding issues being discussed by two Republican presidential
10 candidates.⁴⁶ Clearly, this type of speech is not indicative of a candidacy.

11 The Complaint further alleges that “individuals connected with Clinton’s campaign . . .
12 generally acknowledge[d]” that she was a candidate.⁴⁷ It points to paraphrased statements made
13 by unidentified Clinton associates who claimed that Clinton had decided to run.⁴⁸ This is not
14 enough to show that Clinton had actually made such a decision. Moreover, those statements are

⁴² Clinton & HFA Resp. at 5 n.2.

⁴³ 11 C.F.R. §§ 100.72(b)(3); 100.131(b)(3).

⁴⁴ See, e.g., Factual & Legal Analysis at 9, MUR 6430 (Steven Daines) (finding that commentary in a radio ad on the issue of federal healthcare reform did not trigger candidacy).

⁴⁵ Compl. at 2.

⁴⁶ *Id.*, Ex. D (Anne Gearan and Dan Balz, *Official or Not, Hillary Clinton Builds a Massive 2016 Team-in-Waiting*, WASH. POST, Feb. 6, 2015) (reporting on a February 2015 tweet responding to comments from Sen. Rand Paul and Gov. Chris Christie in which she stated: “The science is clear: The earth is round, the sky is blue, and #vaccineswork. Let’s protect all our kids. #GrandmothersKnowBest”); see Compl. at 2.

⁴⁷ Compl. at 3.

⁴⁸ E.g., Compl., Ex. E (Mike Allen, *Inside Hillary Clinton’s 2016 Plan*, POLITICO, Jan. 26, 2015) (“Campaign advisers say the likelihood of a campaign . . . went to 100 percent.”).

1 directly contradicted by quoted statements in the same articles attributed to Clinton's authorized
2 spokesperson explaining that Clinton was still deciding.⁴⁹

3 3. Operational Planning

4 Individuals contemplating candidacy are permitted to take certain practical and essential
5 steps to prepare for and evaluate the feasibility of a campaign. In AO 1981-32 (Askew), the
6 Commission concluded that activities undertaken for the purpose of assessing "the potential and
7 mechanics of constructing a national campaign organization" were acceptable testing the waters
8 activities.⁵⁰ The Commission has also expressed the caveat that otherwise permissible testing the
9 waters activities may trigger candidacy when, "in context, [they] represent the establishment of a
10 campaign organization."⁵¹

11 The Complaint asserts that Clinton's activities prior to April 1, 2014, "include those that
12 could only be campaign related, such as approving a preliminary campaign budget, searching for
13 a campaign headquarters location, and assembling campaign staff . . ."⁵² Clinton reportedly
14 identified or "hired" members of her campaign staff, including the campaign chairman,

⁴⁹ Compl. at 3 n.1 (citing Ruby Cramer, *Future Clinton Campaign Staffers Working as Volunteers*, BUZZFEED NEWS, Mar. 17, 2015) (quote from Clinton spokesperson Nick Merrill stating that, "[s]he hasn't made a decision about running. She is currently 'testing the waters,' as the Federal Election Commission calls it"); Compl., Ex. D (Gecran & Balz, WASH. POST, Feb. 6, 2015) (quote from Merrill including the caveat "if she runs" when describing her potential candidacy); *see also* Compl. at 3 n.1 (citing Haberman, POLITICO, Jan. 7, 2015) (quoting a "Clinton aide" who explained that Clinton was "using this time to look at what components are necessary to build . . . [a] campaign, so that if she decides to run, she'll be ready").

⁵⁰ AO 1981-32 at 2, 4.

⁵¹ *Id.* at 4.

⁵² Compl. at 2; *see id.*, Ex. E (Allen, POLITICO, Jan. 26, 2015) (reporting, without specifics, that Clinton approved a "preliminary budget" after Christmas 2014); Compl., Ex. D (Gecran & Balz, WASH. POST, Feb. 6, 2015) (reporting that Clinton was "closing in on a New York City campaign headquarters").

1 campaign manager, chief strategist, lead pollster, lead media adviser, communications director,
2 and communications strategist.⁵³

3 First, Clinton's apparent approval of a preliminary campaign budget and efforts to locate
4 a possible campaign headquarters appear to constitute preparatory steps. Respondents assert that
5 Clinton merely "sketched out what a budget might look like in order to determine how much
6 funding would be necessary to wage the campaign" and "identified office space that could be
7 used in the event she decided to run."⁵⁴ They contend that "understanding the parameters of a
8 potential budget is an essential component of testing the waters."⁵⁵ Respondents also explain
9 that Clinton did not actually sign the lease for her campaign headquarters until April 1, 2015, the
10 day that she claims to have become a candidate.⁵⁶

11 Second, her identification of potential campaign staff members similarly appears to have
12 been a preparatory step. Clinton maintains that she "spoke with individuals who could play
13 important roles in her campaign if she decided to run," and that this was part of evaluating the
14 feasibility of a potential candidacy.⁵⁷ She contends that "recruiting sought-after staff is often a

⁵³ See, e.g., Compl., Ex. D (Garan & Balz, WASH. POST, Feb. 6, 2015); see also Compl., Ex. E (Allen, POLITICO, Jan. 26, 2015); Compl. at 3 n.1 (citing Dan Merica, *Top Aide Leaving Foundation to Build Clinton's 2016 Fundraising Team*, CNN, Feb. 9, 2015; Jonathan Martin, *Mandy Grunwald to Join Clinton Team*, N.Y. TIMES, Feb. 5, 2015; Peter Nicholas and Carol E. Lee, *Top White House Official to Leave for Emerging Hillary Clinton Campaign*, WALL ST. J., Feb. 4, 2015); Compl. at 3 (citing Anne Gearan and Philip Rucker, *Hillary Clinton Recruits Chief Strategist, Media Adviser for 2016 Effort*, WASH. POST, Jan. 13, 2015).

⁵⁴ Clinton & HFA Resp. at 2. Further, they note that Clinton did not enter into a lease for campaign headquarters until April 1, 2015, when she decided to become a candidate, and that, in any event, entering into a lease does not itself indicate that an individual who is testing the waters has become a candidate. *Id.* at 2, 5.

⁵⁵ *Id.* at 4-5 ("One cannot know whether a campaign is 'feasible' without determining how much the campaign might cost.").

⁵⁶ *Id.* at 2, 5. It appears that Clinton leased separate office space out of which to conduct her testing the waters activities. HFA Amended 2015 July Quarterly Rpt. at 14,506 (Sept. 3, 2015).

⁵⁷ Clinton & HFA Resp. at 2, 4.

1 necessary precondition to becoming a candidate," and points to instances where individuals have
2 decided not to run because "key staff joined rival campaigns."⁵⁸ The alleged facts do not appear
3 to contradict these contentions.

4 The relevant articles generally discuss Clinton's "hiring" of a campaign staff in a
5 forward-looking manner (e.g., "expected," "campaign-manager-in-waiting," "team-in-waiting")
6 and often use ambiguous terms that do not necessarily imply that anyone was officially hired or
7 actually began working in the discussed role (e.g., "tapped," "recruited").⁵⁹ One article states
8 that a Clinton adviser was "putting markers on prospective staff to keep them accessible as he
9 holds off on formal hires."⁶⁰ Some individuals reportedly left their current positions to support
10 Clinton, but there is no indication that any worked on projects related to a campaign.⁶¹ Clinton
11 was permitted to hire those individuals in a non-campaign role to assist with her testing the
12 waters activities or with her general political activities.⁶² In fact, she acknowledges paying six
13 individuals a total of \$105,655 for reported testing the waters activities.⁶³ One article vaguely

⁵⁸ *Id.* at 4 (citing Ashley Parker and Jonathan Martin, *Support Waning, Romney Decides Against 2016 Bid*, N.Y. TIMES, Jan. 30, 2015).

⁵⁹ See, e.g., Compl., Ex. D (Garan & Balz, WASH. POST, Feb. 6, 2015); Compl., Ex. E (Allen, POLITICO, Jan. 26, 2015); (Rucker & Kane, WASH. POST, Mar. 11, 2015 (cited by Compl., Ex. H (Halper, WEEKLY STANDARD, Mar. 11, 2015))); Compl. at 3 n.1 (citing Maggie Haberman, *Clinton Brings in Mook, Benenson for Likely Team*, POLITICO, Jan. 7, 2015).

⁶⁰ Compl. at 3 n.1 (citing Gabriel Debenedetti and Edward-Issac Doverc, *All-Too-Ready for Hillary*, POLITICO, Feb. 18, 2015).

⁶¹ *Id.* at 2-3. One of the cited articles states that "Clinton has barely begun building her campaign juggernaut, and prospective staffers are getting restless," and that "few of these people have been hired for set roles." *Id.* at 3 n.1 (citing Debenedetti & Doverc, POLITICO, Feb. 18, 2015).

⁶² As a well-known politician, Clinton retains a team of political aides, and she apparently requires a team to accompany her on speaking engagements. Compl., Ex. A (Haberman, POLITICO, Jan. 5, 2014) (describing Clinton's "team of paid political advisers"); L. Ian MacDonald, IPOLITICS, Oct. 5, 2014).

⁶³ HFA Amended 2015 July Quarterly Rpt. at 14,511-14; 14,518-19; 14,566-71 (Sept. 3, 2015). This includes payments to an LLC apparently operated by a consumer marketing specialist who assisted Clinton.

1 states, without providing specifics, that Clinton had a team of “unpaid volunteers” who were
2 “building her all but certain presidential bid” — a Clinton spokesperson responded to the article
3 by claiming that the volunteers were helping her decide whether she should run.⁶⁴

4 Also, there is no indication from the alleged facts that Clinton, based on the aggregate of
5 all her operational planning, had established a campaign organization. One article states that
6 Clinton “has been operating without a full team.”⁶⁵ Another states that “despite widespread
7 assumptions that Clinton has assembled a campaign juggernaut ready to be unveiled as soon as
8 she makes her White House run official, the reality is that she has little more than a budding
9 operation that’s far from set.”⁶⁶ The same article cites to a “Democrat familiar with the process,”
10 who claimed that the notion Clinton had built “some sort of campaign-in-waiting,” was untrue,
11 and a “Democratic operative” asserted that potential donors “are getting antsy” and Clinton’s
12 future team “want[s] to start working.”⁶⁷ Based on the available information, it does not appear
13 that Clinton moved beyond preparatory steps for a potential campaign.

⁶⁴ Compl. at 3 n.1 (citing Cramer, BUZZFEED NEWS, Mar. 17, 2015). It appears that the author was assuming that Clinton’s staff was developing a campaign rather than merely evaluating the feasibility of a campaign.

⁶⁵ Rucker & Kane, WASH. POST, Mar. 11, 2015 (cited by Compl., Ex. H (Halper, WEEKLY STANDARD, Mar. 11, 2015)).

⁶⁶ Compl. at 3 n.1 (citing Debenedetti & Dove, POLITICO, Feb. 18, 2015).

⁶⁷ *Id.*; but see Compl., Ex. D (Gearan & Balz, WASH. POST, Feb. 6, 2015) (vaguely stating that Clinton was “locking in wealthy donors”); Compl., Ex. E (Allen, POLITICO, Jan. 26, 2015) (reporting, but without providing any specifics, that a “component of Hillary Clinton’s emerging strategy involves quietly but aggressively courting key endorsers from the left, who could help increase progressives’ comfort level and take the wind out of a potential challenge”); cf. AO 1982-03 at 3 (concluding that “the exemptions are available to determine ‘political support’ for a potential candidacy).

4. Support From Unauthorized Committees

The Complaint alleges that Clinton's involvement with unauthorized committees is indicative of her decision to become a candidate.⁶⁸ To show that Clinton endorsed their efforts, the Complaint asserts that Clinton was involved in mediating a dispute between Ready PAC and Priorities USA,

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First, there is no indication that the alleged mediation of a dispute between Ready PAC and Priorities USA was indicative of Clinton's decision to become a candidate. The same article that describes this occurrence also states that the groups only had her "tacit approval," and that unauthorized committees were "jockeying to be part of the Clinton movement but operating beyond her immediate direction and control."⁷⁰ Moreover, it states that, when deciding how to intervene in the row between Ready PAC and Priorities USA, Clinton made sure "to keep her team distant from the work of the super PACs to avoid brushing up against rules forbidding coordination."⁷¹ It is unclear whether Clinton or her agents actually provided the groups with any material support in deciding on a mutual strategy.

⁶⁸ Compl. at 4, 8.

⁶⁹ *Id.* at 4. The Complaint further asserts that "[a]ll twenty-nine of the Ready for Hillary staffers will have an opportunity to officially join Clinton's campaign, with six already being hired." *Id.*; *id.*, Ex. I (Annie Karni, *Ready for Hillary Staff Join Clinton Campaign*, POLITICO, Apr. 1, 2015). The cited article was published the same day that Clinton says she decided to become a candidate.

⁷⁰ Compl., Ex. A (Haberman, POLITICO, Jan. 5, 2014).

⁷¹ *Id.*

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12 Furthermore, the Complaint generally asserts that unauthorized political committees were
13 “working on [Clinton’s] behalf, and essentially performing tasks that are necessary for a
14 campaign.”⁷⁶ However, the Complaint does not substantiate this allegation with any specifics

⁷² Compl. at 4.

⁷⁶ Compl. at 4.

1 about the work performed by the groups.⁷⁷ Without more, there is no basis to conclude that
2 Clinton's support from those committees indicated that she decided to become a candidate.

3 5. Consultations With Marketing and Branding Experts

4 In AO 1981-32, the Commission concluded that the hiring of political consultants "for
5 the purpose of assisting with advice on the potential and mechanics of constructing a national
6 campaign organization," was within the scope of testing the waters.⁷⁸ However, such activities
7 may not be "carried out in a fashion indicating that a campaign organization is actually being
8 established, rather than remaining a matter for consultation."⁷⁹

9 The Complaint argues that Clinton's decision to consult with marketing and branding
10 experts indicates that she decided to run for president.⁸⁰ Clinton reportedly hired a firm to
11 conduct self-opposition research, "considered critical in campaigns,"⁸¹ and hired two sought-
12 after consumer marketing specialists "to refresh the well-established brand for tomorrow's
13 marketplace . . . and help her make emotional connection with voters."⁸² The cited articles tend
14 to characterize the experts' work as campaign-related, but, at the same time, they admit that the

⁷⁷ But see discussion *infra* Part III.D (describing how Ready PAC hoped to gather names of supporters that it could pass along to Clinton's campaign). Even if this was one of Ready PAC's goals, there is no suggestion that Clinton or her agents directed Ready PAC. Indeed, one of the cited articles states that it was "far from certain" that the group's data would be welcomed by a Clinton campaign. Compl., Ex. A (Haberman, POLITICO, Jan. 5, 2014).

⁷⁸ AO 1981-32 at 2, 4.

⁷⁹ *Id.* at 5.

⁸⁰ Compl. at 7.

⁸¹ *Id.*, Ex. B (Maggie Haberman, *Hillary Clinton Begins Process of Vetting — Herself*, N.Y. TIMES, Feb. 20, 2015).

⁸² Compl., Ex. C (Phillip Rucker and Anne Gearan, *The Making of Hillary 5.0 — Marketing Wizards Help Re-Imagine Clinton Brand*, WASH. POST, Feb. 21, 2015). Clinton reportedly hired Wendy Clark, who took an unpaid leave from her position as president of brands and strategic marketing for carbonated beverages in North America at Coca-Cola, and Roy Spence, co-founder and chairman of GSD&M who has created well-known advertising campaigns — they are described as "two of corporate America's branding wizards." *Id.*

1 scope of their work was “unclear.”⁸³ One of the articles states that Clinton hired the marketing
2 specialists “onto her team of trusted political advisers,” not necessarily onto her campaign.⁸⁴

3 Clinton claims that she “commissioned . . . self-research” and “consulted with campaign
4 and other professionals” as part of deciding whether to become a candidate.⁸⁵ She contends that
5 this “is precisely the type of activity that the FEC contemplates will occur during the testing-the-
6 waters phase.”⁸⁶ Clinton’s explanation appears to be credible. It is possible that she hired these
7 consultants for an opinion about her “potential vulnerabilities” as she decided whether to run for
8 president.⁸⁷ Indeed, one of the cited articles states that Clinton’s “own history shows the
9 potential for peril,” and talks about how, in 2008, “Clinton’s rebranding went badly, starting with
10 a misreading of the zeitgeist . . . [that was] Obama’s promise of hope and change.”⁸⁸
11 Furthermore, the work provided by marketing and branding experts would be of use to Clinton
12 with respect to her ongoing career as a public figure and in-demand speaker.

13 In AO 1981-32, the Commission opined that it was permissible for an individual to
14 “ascertain” whether the public perceived him as a presidential contender, as long as steps were
15 not taken to “project [him] to the public” as a contender.⁸⁹ There are no facts on record showing

⁸³ Compl., Ex. B (Haberman, N.Y. TIMES, Feb. 20, 2015); see Compl., Ex. C (Rucker & Gearan, WASH. POST, Feb. 21, 2015) (“But the plans for Clinton’s rebranding are not yet clear.”).

⁸⁴ Compl., Ex. C (Rucker & Gearan, WASH. POST, Feb. 21, 2015).

⁸⁵ Clinton & HFA Resp. at 2. HFA reported that Clinton paid what appears to be Wendy Clark’s LLC at total of \$29,166 for “strategic consulting services.” HFA Amended 2015 July Quarterly Rpt. at 14,518-19 (Sept. 3, 2015). Clinton also directly paid Clark \$744 for “employee benefits.” *Id.* at 14,511.

⁸⁶ Clinton & HFA Resp. at 4.

⁸⁷ Compl., Ex. B (Haberman, N.Y. TIMES, Feb. 20, 2015).

⁸⁸ Compl., Ex. C (Rucker & Gearan, WASH. POST, Feb. 21, 2015).

⁸⁹ AO 1981-32 at 4-5.

1 that Clinton implemented any of the advice she may have received from the experts. In AO
2 1982-03, the Commission stated that the line between assessing public support and acting on that
3 information is demonstrating by moving "into the process of planning and scheduling public
4 activities designed to heighten . . . political appeal to the electorate."⁹⁰ Again, there are no facts
5 on record showing that Clinton engaged in such public activities. Without more, there is no basis
6 to conclude that Clinton's alleged hiring of marketing and branding experts was necessarily
7 indicative of a decision to run for president.

8 6. Conclusion

9 The alleged facts regarding Clinton's duration of testing the waters activities, public
10 statements, operational planning, support from unauthorized political committees, and hiring of
11 marketing and branding experts do not indicate the Clinton decided to become a candidate prior
12 to April 1, 2015. Her alleged activities did not "take on a partisan political quality which would
13 indicate that a decision has been made to seek nomination for election, or election, to a Federal
14 office."⁹¹ Therefore, the Commission finds no reason to believe that Clinton violated 52 U.S.C.
15 § 30102(e)(1) by failing to timely file her Statement of Candidacy.

16 **B. There is No Reason to Believe That Clinton Accepted Excessive or Prohibited**
17 **Contributions in Connection With Her Speaking Engagements**

18 The Act defines a contribution as "anything of value made by any person for the purpose
19 of influencing any election for Federal office."⁹² Moreover, the Act places limits on the amounts
20 of contributions that candidates may accept, and prohibits the acceptance of contributions from

⁹⁰ AO 1982-03 at 4.

⁹¹ AO 1981-32 at 4.

⁹² 52 U.S.C. § 30101(8)(A)(i).

10804747-10880

1 corporations and foreign nationals.⁹³ The Commission's regulations state that income received
2 during an election cycle, including a salary or other earned income that the candidate receives for
3 *bona fide* employment, is considered the "personal funds" of a candidate and not a contribution
4 subject to the limits and prohibitions of the Act.⁹⁴

5 The Complaint alleges that the large payments Clinton received from apparent domestic
6 and foreign corporations for speaking engagements prior to announcing her candidacy were
7 contributions because Clinton was funding "her non-declared presidential campaign," and, in
8 light of their size and origins, were both excessive and prohibited.⁹⁵ Clinton maintains that this
9 was part of her "regular, ongoing business" that she continued while she was deciding whether to
10 run for president and, therefore, none of the transactions were contributions.⁹⁶ Indeed, one of the
11 cited articles states that Clinton gave speeches "to dozens of industry associations, Wall Street
12 banks, universities and other groups" and used a speaking agency to manage her engagements.⁹⁷
13 It appears that the payments were for *bona fide* employment and there is no indication that the
14 entities paid Clinton to influence her potential campaign or that Clinton engaged in any
15 campaign-related or testing the waters activity during the course of her speeches.⁹⁸ Therefore,

⁹³ *Id.* §§ 30116(a), 30118(a), 30121(a).

⁹⁴ 11 C.F.R. § 100.33(b); *see also* 11 C.F.R. § 113.1(g)(6)(iii).

⁹⁵ Compl. at 3-4, 8; *see id.*, Ex. F (Chozick, N.Y. TIMES, Feb. 24, 2015).

⁹⁶ *See Clinton & HFA Resp.* at 5-6.

⁹⁷ Compl. at 3 (citing Helderman & Rucker, WASH. POST, Jan. 20, 2015).

⁹⁸ *Cf.* Compl., Ex. F (Chozick, N.Y. TIMES, Feb. 24, 2015) (describing one of her speeches as a "keynote address" at a women's conference); Compl. at 3 (citing Alex Seitz-Wald, *Clinton Mixes Help for Democrats with Paid Gigs*, MSNBC, Oct. 2, 2014) (describing other speeches as keynote addresses at various conferences). Moreover, the cited articles report that Clinton often donated her fees to the Clinton foundation. Compl. at 3 (citing Helderman & Rucker, WASH. POST, Jan. 20, 2015); Compl. at 3 (citing Seitz-Wald, MSNBC, Oct. 2, 2014).

the Commission finds no reason to believe that Clinton and HFA violated 52 U.S.C. §§ 30116(a), 30118(a), or 30121(a)(2) by accepting excessive and prohibited contributions.

C. There is No Reason to Believe That Clinton and HFA Impermissibly Coordinated With Ready PAC and Priorities USA

The Act prohibits any person from making, and any candidate or committee from knowingly accepting, excessive contributions.⁹⁹ In addition, the Act provides that “expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committee, or their agents” shall be considered a contribution to such candidate.¹⁰⁰ Under the Commission’s regulations, an expenditure for a communication is “coordinated,” and therefore treated as a contribution under the Act, when the communication: (1) is paid for, in whole or part, by a person other than the candidate, committee, or party; (2) satisfies at least one of the content standards described in 11 C.F.R. § 109.21(c); and (3) satisfies at least one of the conduct standards described in 11 C.F.R. § 109.21(d).¹⁰¹ The Complaint alleges that “Clinton has taken actions that constitute prohibited coordination with the super PACs from which she benefits.”¹⁰²

In particular, the Complaint alleges that Clinton was involved in mediating tension between Ready PAC and Priorities USA.¹⁰³ However, the Complaint does not provide any information regarding expenditures that might have been coordinated. Moreover, there is no indication that Clinton or her agents cooperated, consulted, requested, or suggested that either

⁹⁹ 52 U.S.C. § 30116(a), (f).

¹⁰⁰ *Id.* § 30116(a)(7)(B)(i); *see also* 11 C.F.R. § 109.20.

¹⁰¹ 11 C.F.R. § 109.21(a)(1)-(3).

¹⁰² Compl. at 8.

¹⁰³ *Id.* at 4, 8.

1 committee make any expenditures. Rather, the cited article describes one phone call between a
2 Priorities USA official and Clinton aide Huma Abedin which apparently resulted in an edict from
3 Clinton that things “needed to be sorted out.”¹⁰⁴ The article specifically states that Clinton
4 “wanted to keep her team distant from the work of the super PACs to avoid brushing up against
5 the rules forbidding coordination.”¹⁰⁵ Therefore, the Commission finds no reason to believe that
6 Clinton and HFA knowingly accepted excessive contributions.

7 **D. There is Reason to Believe That the Series of Email “Swaps” Resulted in an**
8 **Excessive In-Kind Contribution**

9 The Commission has long recognized that committees may sell, rent, or exchange their
10 lists for fair market value.¹⁰⁶ Moreover, the Commission has opined that list rentals shall not be
11 treated as contributions so long as the list is transferred “at the usual and normal charge in a *bona*
12 *fide*, arm’s-length transaction” and is “used in a commercially reasonable manner.”¹⁰⁷ The
13 provision of any goods or services without charge or at a charge that is less than the usual and
14 normal charge is an in-kind contribution, the amount of which is the difference between the usual
15 and normal charge and the amount charged.¹⁰⁸

16 The Complaint alleges that a series of email list “swaps,” which reportedly occurred
17 several weeks after Clinton announced her candidacy, resulted in HFA knowingly accepting an

¹⁰⁴ Compl., Ex. A (Haberman, POLITICO, Jan. 5, 2014); see Compl. at 4.

¹⁰⁵ Compl., Ex. A (Haberman, POLITICO, Jan. 5, 2014).

¹⁰⁶ E.g., Advisory Op. 2014-09 at 4 n.6 (REED Marketing) (“AO 2014-09”); Advisory Op. 2014-06 at 8 (Ryan, Ryan for Congress, and Prosperity Action); Advisory Op. 2002-14 at 5 (Libertarian Nat’l Comm.) (“AO 2002-14”); Advisory Op. 1982-41 at 2 (Dellums) (“AO 1982-41”).

¹⁰⁷ AO 2014-09 at 4 n.6 (permitting a “contractually limited, commercially reasonable exchange” of a marketing firm’s services for a political committee’s mailing list); AO 1982-41 at 2 (“[A]ssuming such multi-party exchanges are routine and usual in the list brokering industry, the Commission concludes that this exchange would not result in a contribution, but is instead a bargained-for exchange of consideration in a commercial transaction.”).

¹⁰⁸ 11 C.F.R. § 100.52(d)(1) (providing “mailing lists” as an example of goods or services).

1 excessive in-kind contribution in the form of Ready PAC's email list.¹⁰⁹ It appears that Ready
2 PAC swapped lists with an "independent group" and that entity, in turn, swapped lists with
3 HFA.¹¹⁰ Ready PAC reportedly spent upwards of \$15 million to develop the list of 4 million
4 supporters over the course of two years.¹¹¹ HFA acknowledges the swap and contends that "the
5 names exchanged by HFA had an equal market value to the names received by HFA."¹¹² HFA
6 has not provided any specific information regarding the identity of the "independent group" or
7 the values of the exchanged lists.

8 The available information suggests that the series of transactions that resulted in HFA
9 obtaining Ready PAC's email list may not have been *bona fide*.¹¹³ A March 2015 article,
10 published a few weeks before Clinton announced her candidacy, reported that Ready PAC had
11 "worked up plans to share [its] full supporter list with the Clinton campaign either through a list
12 rental . . . or list sharing."¹¹⁴ There are questions as to whether HFA's list and Ready PAC's list
13 were of equal value. The news article that reported on the alleged list swaps claimed that "senior
14 campaign officials admitted they were relying in part on an outdated supporter list from 2008"

¹⁰⁹ Supp. Compl. at 1-2; see Supp. Compl., Ex. A (Karni, POLITICO, May 30, 2015) (describing Ready PAC's email list as a "data gold mine that will immediately bolster [Clinton's] fundraising and organizing efforts").

¹¹⁰ See Supp. Compl., Ex. A (Karni, POLITICO, May 30, 2015).

¹¹¹ Compl., Ex. G (Cameron Joseph, *Ready for Hillary Ready to Step Aside as She Prepares Campaign*, THE HILL, Mar. 22, 2015); Supp. Compl., Ex. A (Karni, POLITICO, May 30, 2015).

¹¹² Clinton & HFA Supp. Rrsp. at 1.

¹¹³ Cf. Advisory Op. 1983-02 (Philadelphia Electric) (concluding that, in the context of an exchange or sale, "each list's value, at least in part, is determined on the basis of the committee's political fundraising efforts or other political use of the list").

¹¹⁴ Compl., Ex. G (Joseph, THE HILL, Mar. 22, 2015); see also Compl., Ex. A (Haberman, POLITICO, Jan. 5, 2014) ("Ready for Hillary hopes to make its data available to a 2016 Clinton campaign.").

1 and described a campaign volunteer's "unproductive" phone-banking session using names from
2 the outdated list.¹¹⁵

3 Therefore, the Commission finds reason to believe that HFA violated 52 U.S.C.

4 § 30116(f) by knowingly accepting an excessive in-kind contribution.

¹¹⁵ Supp. Compl., Ex. A (Karni, POLITICO, May 30, 2015).

1604446-10001

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

Respondent: Ready PAC and Amy Wills Gray MUR 6932
in her official capacity as treasurer

I. INTRODUCTION

This matter involves allegations that Ready PAC and Amy Wills Gray in her official capacity as treasurer (formerly known as Ready for Hillary PAC) violated 52 U.S.C. § 30116(a) of the Federal Election Campaign Act of 1971, as amended (the "Act"). The Complaint alleges that Ready PAC impermissibly coordinated with Hillary Clinton in connection with her 2016 presidential campaign and made an in-kind contribution to Hillary for America ("HFA"), Clinton's principal campaign committee, in the form of its email list.

For the reasons stated below, the Commission finds: (1) no reason to believe that Ready PAC violated 52 U.S.C. § 30116(a) by making excessive contributions with respect to alleged coordinated communications; and (2) reason to believe that Ready PAC violated 52 U.S.C. § 30116(a) by making an excessive contribution with respect to the email list.

II. FACTUAL BACKGROUND

A. Alleged Coordination

In early 2013, Huma Abedin, one of Clinton's closest aides, was reportedly contacted by someone from Priorities USA regarding "trouble brewing" between Priorities USA and Ready PAC, seeking guidance on how the groups should work together.¹ The call reportedly "touched off a larger debate in Clinton's circle" and "Clinton herself was forced to grapple with the run-in

¹ Compl., Ex. A (Maggie Haberman, *Hillary Clinton's Shadow Campaign*, POLITICO, Jan. 5, 2014). Priorities USA was an independent-expenditure-only political committee that formerly supported Barack Obama's 2012 candidacy but "was in discussions to reinvent itself as a pro-Hillary Clinton endeavor." *Id.*

1 between the two groups.”² There is no indication regarding how Clinton or Abedin responded,
2 but the cited news article states that Ready PAC and Priorities USA subsequently resolved their
3 conflict.³ The Complaint alleges that Clinton or her agents impermissibly coordinated with
4 Ready PAC.⁴ Respondent denies that there was impermissible coordination.⁵

5 **B. HFA’s Receipt of Ready PAC’s Email List**

6 The Complaint alleges that HFA received an excessive in-kind contribution when it
7 obtained Ready PAC’s email list in May 2015, after Clinton announced her candidacy.⁶ HFA
8 reportedly acquired the email list through a “swap” with “another independent group.”⁷ Ready
9 PAC appears to acknowledge having exchanged email lists — apparently, Ready PAC
10 exchanged its email list with the independent group which, in turn, exchanged the list with
11 HFA.⁸ However, Ready PAC argues that no contribution resulted because the lists involved in
12 the swap agreements were of equal market value.⁹

² *Id.*

³ *See id.* (“Eventually they settled on a solution: Ready for Hillary would focus on collecting and analyzing voter data, accepting donations up to \$25,000. Priorities would be the super PAC for mega-donors, working solely on paid advertising.”).

⁴ Compl. at 8 (June 8, 2015); Supp. Compl. at 2 (June 8, 2015).

⁵ *See* Ready PAC Resp. at 4-6 (June 4, 2015).

⁶ Supp. Compl. at 2.

⁷ *See id.*, Ex. A (Annie Karni, *Hillary Clinton Campaign Scores Ready for Hillary Email List*, POLITICO, May 30, 2015).

⁸ *See* Ready PAC Supp. Resp. at 2 (July 10, 2015).

⁹ *Id.* at 3.

1 **III. LEGAL ANALYSIS**

2 **A. There is No Reason to Believe That Ready PAC Impermissibly Coordinated**
3 **With Clinton**

4 The Act prohibits any person from making, and any candidate or committee from
5 knowingly accepting, excessive contributions.¹⁰ In addition, the Act provides that "expenditures
6 made by any person in cooperation, consultation, or concert, with, or at the request or suggestion
7 of, a candidate, his authorized political committee, or their agents" shall be considered a
8 contribution to such candidate.¹¹ Under the Commission's regulations, an expenditure for a
9 communication is "coordinated," and therefore treated as a contribution under the Act, when the
10 communication: (1) is paid for, in whole or part, by a person other than the candidate, committee,
11 or party; (2) satisfies at least one of the content standards described in 11 C.F.R. § 109.21(c); and
12 (3) satisfies at least one of the conduct standards described in 11 C.F.R. § 109.21(d).¹² The
13 Complaint alleges that "Clinton has taken actions that constitute prohibited coordination with the
14 super PACs from which she benefits."¹³

15 The Complaint alleges that Clinton was involved in mediating tension between Ready
16 PAC and Priorities USA.¹⁴ However, the Complaint does not provide any information regarding
17 expenditures that might have been coordinated.¹⁵ Moreover, there is no indication that Clinton
18 or her agents cooperated, consulted, requested, or suggested that either committee make any

¹⁰ 52 U.S.C. § 30116(a), (f).

¹¹ *Id.* § 30116(a)(7)(B)(i); *see also* 11 C.F.R. § 109.20.

¹² 11 C.F.R. § 109.21(a)(1)-(3).

¹³ Compl. at 8.

¹⁴ *Id.* at 4, 8.

¹⁵ Ready PAC denies that it made any communications that would satisfy the content and conduct prongs of
the Commission's regulation. Ready PAC Resp. at 5.

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1 expenditures. Rather, the cited article describes one phone call between a Priorities USA official
2 and Clinton aide Huma Abedin which apparently resulted in an edict from Clinton that things
3 “needed to be sorted out.”¹⁶ The article specifically states that Clinton “wanted to keep her team
4 distant from the work of the super PACs to avoid brushing up against the rules forbidding
5 coordination.”¹⁷ Therefore, the Commission finds no reason to believe that Ready PAC made an
6 excessive contribution with respect to the alleged coordination.

7 **B. There is Reason to Believe that the Series of Email “Swaps” Resulted in an**
8 **Excessive In-Kind Contribution**

9 The Commission has long recognized that committees may sell, rent, or exchange their
10 lists for fair market value.¹⁸ Moreover, the Commission has opined that list rentals shall not be
11 treated as contributions so long as the list is transferred “at the usual and normal charge in a *bona*
12 *fide*, arm’s-length transaction” and is “used in a commercially reasonable manner.”¹⁹ The
13 provision of any goods or services without charge or at a charge that is less than the usual and
14 normal charge is an in-kind contribution, the amount of which is the difference between the usual
15 and normal charge and the amount charged.²⁰

16 The Complaint alleges that a series of email list “swaps,” which reportedly occurred
17 several weeks after Clinton announced her candidacy, resulted in HFA knowingly accepting an

¹⁶ Compl., Ex. A (Haberman, POLITICO, Jan. 5, 2014); *see* Compl. at 4.

¹⁷ Compl., Ex. A (Haberman, POLITICO, Jan. 5, 2014).

¹⁸ *E.g.*, Advisory Op. 2014-09 at 4 n.6 (REED Marketing) (“AO 2014-09”); Advisory Op. 2014-06 at 8 (Ryan, Ryan for Congress, and Prosperity Action); Advisory Op. 2002-14 at 5 (Libertarian Nat’l Comm.) (“AO 2002-14”); Advisory Op. 1982-41 at 2 (Dellums) (“AO 1982-41”).

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2 PAC swapped lists with an "independent group" and that entity, in turn, swapped lists with
3 HFA.²² Ready PAC reportedly spent upwards of \$15 million to develop the list of 4 million
4 supporters over the course of two years.²³ Ready PAC appears to acknowledge the swap and
5 contends that it "exchanged lists . . . pursuant to written agreements that ensured both entities
6 received equal value."²⁴ Ready PAC has not provided any specific information regarding the
7 identity of the "independent group" or the values of the exchanged lists.

8 The available information suggests that the series of transactions that resulted in HFA
9 obtaining Ready PAC's email list may not have been at the usual and normal charge in a *bona*
10 *fide* arm's-length transaction.²⁵ A March 2015 article, published a few weeks before Clinton
11 announced her candidacy, reported that Ready PAC had "worked up plans to share [its] full
12 supporter list with the Clinton campaign either through a list rental . . . or list sharing."²⁶ There
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14 article that reported on the alleged list swaps claimed that "senior campaign officials admitted

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²² *See* Supp. Compl., Ex. A (Karni, POLITICO, May 30, 2015).

²³ Compl., Ex. G (Cameron Joseph, *Ready for Hillary Ready to Step Aside as She Prepares Campaign*, THE HILL, Mar. 22, 2015); Supp. Compl., Ex. A (Karni, POLITICO, May 30, 2015).

²⁴ Ready PAC Supp. Rrsp. at 2.

²⁵ *Cf.* Advisory Op. 1983-02 (Philadelphia Electric) (concluding that, in the context of an exchange or sale, "each list's value, at least in part, is determined on the basis of the committee's political fundraising efforts or other political use of the list").

²⁶ Compl., Ex. G (Joseph, THE HILL, Mar. 22, 2015); *see also* Compl., Ex. A (Haberman, POLITICO, Jan. 5, 2014) ("Ready for Hillary hopes to make its data available to a 2016 Clinton campaign.").

- 1 they were relying in part on an outdated supporter list from 2008” and described a campaign
2 volunteer’s “unproductive” phone-banking session using names from the outdated list.²⁷
3 Therefore, the Commission finds reason to believe that Ready PAC violated 52 U.S.C.
4 § 30116(a) by making an excessive in-kind contribution with respect to the email list.

²⁷ Supp. Compl., Ex. A (Karni, POLITICO, May 30, 2015).